Office - Supreme Court, U.S.
FILED
FEB 5 1982
ALEXANDER L. STEVAS.
CLERK

No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR PETITIONERS

LLOYD N. CUTLER
JAMES ROBERTSON *
EDWARD TYNES HAND
WILLIAM R. RICHARDSON, JR.
JOHN PAYTON
DRAKE CUTINI
WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

THOMAS I. ATKINS
CHARLES E. CARTER
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Tenth Floor
1790 Broadway
New York, New York 10019
(212) 245-2100

Counsel for Petitioners

* Counsel of Record

Of Counsel:
WILLIAM L. ROBINSON
FRANK R. PARKER
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

December 24, 1981

QUESTIONS PRESENTED FOR REVIEW

1. Where a state court found that a boycott of white merchants in a small city, organized by Black citizens to protest the city's and county's continued denial of their civil rights, was accompanied not only by speeches, picketing, leaflet distribution and peaceful marches, but also by what the state court called "intimidation, threats, social ostracism, vilification and traduction," as well as a few incidents of physical violence, could the state court constitutionally rule that the entire boycott was an unlawful common law conspiracy for which all boycott participants, whether or not they engaged in acts of physical violence, were liable in damages?

2. Whether or not the state court could constitutionally hold the entire boycott illegal, could it constitutionally enjoin any or all of the participants from engaging in further peaceful boycott activity such as "persuading, soliciting and advising" any person to boycott the merchants?

LIST OF PARTIES BELOW

In addition to the National Association for the Advancement of Colored People and these 91 individual Petitioners,* the following parties were Appellants in the Mississippi Supreme Court: Mississippi Action for Progress, Inc.; Beatrice Atlas; Eli Brooks; Priscilla Brooks; Maggie Clark; Mack Lewis Davis; Alex Dorsey; Sally Ella Dorsey; Mary Harris Durham; John Eggleston; John Ellis; Rachael Ellis; Ethel Graise; Charlie Harris; Albert Jackson; Mrs. E. J. Jennings; Lela Jones; Bobby Kelly; Clarence Lucas; Bessie Newman; D. A. Newman; Roosevelt Owens; Henry Otis Preston; Viola Roberson; Dora Shorter; Roman Shorter; Rosa Shorter;

---

* The individual Petitioners are Ferd Allen; Henry Anderson, Sr.; Alonzo Atlas; Calvin Bailey; James Bailey, Jr.; McLawrence Bailey; Joseph Mack "Buster" Barber; Kenneth C. Barber; Willie Beasley; Helen Beasley; Calvin Blackburn; Marjorie W. Brandon; Janie Brown; Tullos Brown; Eddie Burrell; James Burrell; Robert Butler, Jr.; Arthur Lee Camphor; Irma Rae Camphor; W. E. Camphor; Alberta Coleman; Charles Collier; James Collier; Alexander Collins; Geneva Collins; Thelma Crowder; Dan Currie; Sarah Jane Currie; Charles Davis; Mary Ella Dee; James Edward DeVoual; Geneva Durham; Johnny Frank Durham; Harvey Ellis; Jim Ellis, Jr.; Katie Ellis; Charles Evers; James Gray; Walter L. Griffin, Sr.; Bernard Gusta; Leesco Guster; Clyde Harvey; Jim Holt; Willie Jackson; Jesse Johnson; Roscoe Johnson; Julia Coleman Jones; Marcus Jones; Nathaniel H. Jones; Samuel Jones, Jr.; Bernice Lee; A. E. Lee; Margaret Liggins; Julia Lucas; Nathaniel Martin; Leander Monroe; Johnny Moore; Mary Lee Moore; Willie V. Moore; Ellis Neal, Sr.; Amos Newsome, Jr.; James Herbert Odom; Leona Owens; William Owens; Henry Patton, Jr.; Even Roberson; William Roberson; Mary Ross; Odessa Ross; William Matt Ross; Elmo J. Scott, Jr.; Rudolph J. Shields; Oliver Shinall; Bilbo Smith; Ira Thomas; Carl Thompson, Jr.; Marguerite Thompson; Mack Tisdale; George Henry Walker; Thelma K. Walker; Eddie Walls, Jr.; Alex Warner; Albert Weathers; Carl Lee Wells, a/k/a Boone Wells; Eddie Lee Wells; Katie Beatrice Wells; James Whitney; Calvin Williams; Ernestine Williams; Aaron Wilson; and Arthur Wyatt. *See* R. 15253-55 (stipulation amending complaint to conform to proof).

Annie B. Smith; Delores Ross Smith; Leon Tarleton; Lessie Mae Walls; Alonzo Warner; Ethel Warner; Bonnie Wells; Gussie Pearl Wilson; Willie Wilson; Early Wren; and Ruby Wren.

The following parties were Appellees in the Mississippi Supreme Court: Claiborne Hardware Company, Inc.; Q. H. McDaniel, Jr., d/b/a McDaniel Pharmacy; James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store; Waddy Abraham, d/b/a Jitney Jungle; Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store; Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store; Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria; Port Gibson Lumber & Supply Company, Inc.; W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry; Charles R. Dobbs, d/b/a Western Auto Associates Store; Allen Motor Co., Inc.; and Mrs. Edgar A. McCaa, d/b/a Town & Country.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES BELOW	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
Statement of Facts	2
Proceedings Below	8
SUMMARY OF ARGUMENT	12
ARGUMENT	16
I. BOYCOTTS SEEKING REDRESS OF POLITICAL GRIEVANCES ARE CLASSIC AMERICAN FORMS OF PETITION AND ASSEMBLY, AND NON-VIOLENT ACTIVITIES TO SUPPORT OR ENFORCE SUCH BOYCOTTS ARE PROTECTED BY THE FIRST AMENDMENT	16
A. Political Boycott Activities Have Formed an Integral Part of the American Political Process for Over Two Hundred Years	16
B. Peaceful Activities To Support and Enforce Civil Rights Boycotts Are Protected by the First Amendment	21

TABLE OF CONTENTS—Continued

Page

II. THE MISSISSIPPI SUPREME COURT'S RULING THAT THE ENTIRE BOYCOTT WAS UNLAWFUL AND THAT ALL BOYCOTT PARTICIPANTS WERE VICARIOUSLY LIABLE BECAUSE A FEW INCIDENTS OF "FORCE, VIOLENCE AND THREATS" WERE "PRESENT" DURING THE BOYCOTT'S MULTI-YEAR DURATION IS FACTUALLY UNSUPPORTED AND IN ANY EVENT IS CONSTITUTIONALLY WRONG 26

A. The Claiborne County Boycott Was a Peaceful and Voluntary Boycott. Most of the Sporadic Incidents of Violence That Occurred During the Time of the Boycott Were Not Found To Have Been Committed by Identified Boycott Participants, and Were Not a Principal Cause of Its Success or of Any Business Harm to Respondents 26

B. Most of the 91 Individual Petitioners and Petitioner NAACP Engaged Solely in Peaceful Boycott Activities, and May Not Constitutionally Be Held Liable for Any Tortious Acts of a Few 34

C. It Was Constitutionally Impermissible To Hold Petitioners Liable in Damages for Business Losses of Respondents That Resulted from Peaceful Enforcement of a Political Boycott 39

III. THE INJUNCTION FLATLY PROHIBITING PEACEFUL FIRST AMENDMENT EXPRESSION AND ASSOCIATION IS AN UNCONSTITUTIONAL PRIOR RESTRAINT 42

CONCLUSION 46

APPENDIX 1a

TABLE OF AUTHORITIES

Cases	Page
Abood v. Detroit Board of Education, 431 U.S. 209 (1977)	37, 45
Aptheker v. Secretary of State, 378 U.S. 500 (1964)	38
Bates v. City of Little Rock, 361 U.S. 516 (1960)	33
Carey v. Brown, 447 U.S. 455 (1980)	22, 45
Carroll v. President & Commissioners of Princess Anne, 393 U.S. 175 (1968)	45
Citizens Against Rent Control v. City of Berkeley, 102 S. Ct. 434 (1981)	16, 37
Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980)	39
County of Los Angeles v. Davis, 440 U.S. 625 (1979)	11
Dennis v. United States, 341 U.S. 494 (1951)	44, 45
De Jonge v. Oregon, 299 U.S. 353 (1937)	21, 37
Edwards v. South Carolina, 372 U.S. 229 (1963)	22, 26
Elfbrandt v. Russell, 384 U.S. 11 (1966)	38
Feiner v. New York, 340 U.S. 315 (1951)	26
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963)	33
Hague v. CIO, 307 U.S. 496 (1939)	22
Healy v. James, 408 U.S. 169 (1972)	38
Henry v. First National Bank, 50 F.R.D. 251 (N.D. Miss. 1970), *rev'd*, 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972) (*"Henry I"*)	9
Henry v. First National Bank, 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) (*"Henry II"*)	10, 24, 44
In re Primus, 436 U.S. 412 (1978)	26
In re Wright, 251 F. Supp. 880 (M.D. Ala. 1965)	22
Kelly v. Page, 335 F.2d 114 (5th Cir. 1964)	22
Keyishian v. Board of Regents, 385 U.S. 589 (1967)	38
Letter Carriers Branch 496 v. Austin, 418 U.S. 264 (1974)	25
Liner v. Jafco, Inc., 375 U.S. 301 (1964)	11

TABLE OF AUTHORITIES—Continued

	Page
Linn v. Plant Guard Workers, 383 U.S. 53 (1966)	25
Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293 (1961)	33
Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969)	22, 23, 44
McMeans v. Mayor's Court, 247 F. Supp. 606 (M.D. Ala. 1965)	22
Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941)	39, 44, 45
Mississippi Chemical Corp. v. Chemical Construction Corp., 444 F. Supp. 925 (S.D. Miss. 1977)	9
Missouri v. National Organization for Women, Inc., 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980)	21
Mitchum v. Foster, 407 U.S. 225 (1972)	23
MPI Inc. v. McCullough, 463 F. Supp. 887 (N.D. Miss. 1978)	9
NAACP v. Alabama ex rel. Flowers, 377 U.S. 288 (1964)	24, 33
NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)	33
NAACP v. Button, 371 U.S. 415 (1963)	21, 33, 39
NAACP v. Thompson, 357 F.2d 831 (5th Cir.), *cert. denied*, 385 U.S. 820 (1966)	22
Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931)	42
Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976)	42, 43
New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	25, 26
New York Times Co. v. United States, 403 U.S. 713 (1971)	42, 43
Noto v. United States, 367 U.S. 290 (1961)	38
Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971)	24, 42
Schneider v. State, 308 U.S. 147 (1939)	22, 25
Smith v. City of Montgomery, 251 F. Supp. 849 (M.D. Ala. 1966)	22
Smith v. Grady, 411 F.2d 181 (5th Cir. 1969)	22, 44

TABLE OF AUTHORITIES—Continued

	Page
Stryjewski v. Local Union No. 830, 451 Pa. 550, 304 A.2d 463 (1973)	40
Teamsters Local 20 v. Morton, 377 U.S. 252 (1964)	40
Teamsters Local 795 v. Newell, 356 U.S. 341 (1958), *rev'g* 181 Kan. 898, 317 P.2d 817 (1957)	45
Thomas v. Collins, 323 U.S. 516 (1945)	21
Thornhill v. Alabama, 310 U.S. 88 (1940)	22, 25
Time, Inc. v. Firestone, 424 U.S. 448 (1976)	39
United Aircraft Corp. v. International Association of Machinists, 161 Conn. 79, 285 A.2d 330 (1971), *cert. denied*, 404 U.S. 1016 (1972)	40, 41
United Mine Workers v. Gibbs, 383 U.S. 715 (1966)	40
United Mine Workers v. Pennington, 381 U.S. 657 (1965)	40
United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973)	38
United States v. Robel, 389 U.S. 258 (1967)	38
United States v. Spock, 416 F.2d 165 (1st Cir. 1969)	38
Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957)	45
Watts v. United States, 394 U.S. 705 (1969)	32

Constitutional Provisions

First Amendment	*passim*
Sixth Amendment	33
Fourteenth Amendment	2, 37

Statutory Provisions

Miss. Code Ann. § 97-23-83	24
Miss. Code Ann. § 97-23-85	10
28 U.S.C. § 1257(3)	1
28 U.S.C. § 1343(3)	9
28 U.S.C. § 2283	23
42 U.S.C. § 1983	23

TABLE OF AUTHORITIES—Continued

Miscellaneous Page

C. ANDREWS, THE BOSTON MERCHANTS AND THE NON-IMPORTATION MOVEMENT (1968 ed.) 17, 19
H. COMMAGER, DOCUMENTS OF AMERICAN HISTORY (1963 ed.) 19
Comment, *The Consumer Boycott*, 42 MISS. L.J. 226 (1971) 22
J. FLEXNER, GEORGE WASHINGTON: THE FORGE OF EXPERIENCE (1732-1775) (1965) 18, 19
A.L. HIGGINBOTHAM, IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD (1978) 16
R. KETCHEM, JAMES MADISON: A BIOGRAPHY (1971) 19
R. KLUGER, SIMPLE JUSTICE (1976) 21
H. LAIDLER, BOYCOTTS AND THE LABOR STRUGGLE (1913) 20
D. MALONE, JEFFERSON THE VIRGINIAN (1948) ..18, 19, 38
E. MCMANUS, A HISTORY OF NEGRO SLAVERY IN NEW YORK (1966) 16
Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 YALE L.J. 397 (1957) 22
Note, *Political Boycott Activity and the First Amendment*, 91 HARV. L. REV. 659 (1978) 22
1 OXFORD ENGLISH DICTIONARY 260, cols. 5 & 6 (compact ed. 1971) 17
W. PROSSER, LAW OF TORTS § 41 (4th ed. 1971) 39
A. SCHLESINGER, THE COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION (1939 ed.) ...17, 18, 19, 32
C. UBBELOHDE, THE VICE-ADMIRALTY COURTS AND THE AMERICAN REVOLUTION (1960) 17, 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi in this case, *NAACP v. Claiborne Hardware Co.*, 393 So. 2d 1290 (Miss. 1980), is reproduced in Appendix A to the Appendices to Petition for Writ of Certiorari ("App."). The unreported opinion of the Chancery Court of the First Judicial District of Hinds County is reproduced in App. B.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on December 10, 1980. App. C. That court extended the time for filing of petitions for rehearing until January 24, 1981. App. D. Petitions for rehearing were denied on March 4, 1981. App. E. By order of Justice Powell, dated May 23, 1981, the time for filing a petition for writ of certiorari was extended to and including August 1, 1981. App. F. The petition was filed in this Court on July 31, 1981. Jurisdiction is vested by 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

The Fourteenth Amendment to the United States Constitution provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

STATEMENT OF THE CASE

Petitioners are the National Association for the Advancement of Colored People ("NAACP")[1] and 91 individual Black residents of the State of Mississippi. Respondents are twelve merchants doing business in the town of Port Gibson, in Claiborne County, Mississippi. This case arises from a civil rights boycott in Claiborne County that began in 1966.

Statement of Facts

The Claiborne County boycott campaign was an integral part of the civil rights movement of the 1960's. Its causes went back much further. Since Reconstruction, Black citizens of Claiborne County had been foreclosed from participation in elections, forced to attend segregated schools, routinely denied the use of basic public accommodations, and denied employment either in public jobs

---

[1] The listing of those entities affiliated with Petitioner NAACP is provided in footnote 1 to the Petition.

funded by their tax dollars or in private jobs working for the merchants who depended on their trade. *See* App. 6b (Chancery Court opinion). In December 1965, a Human Relations Committee, comprised of certain Black citizens in Claiborne County, presented a petition for redress of grievances to municipal and county officials and merchants. R. 590-91; Ex. D-2 (R. 770, 771).

A bi-racial committee was appointed by Port Gibson officials to deal with these matters; its members included five of these Petitioners and some of the Respondents. This committee met on a number of occasions to deal with Port Gibson's racial problems, but there was no final resolution of these grievances. R. 590-92, 756-57, 767-68, 772-73; Ex. D-1 (R. 753, 754). On March 14, 1966, the Black members of the committee presented to the public officials of Port Gibson and Claiborne County a further petition entitled "Demands for Racial Justice." That petition was "principally addressed to governmental changes." App. 7b, 13b (Chancery Court opinion). It called, among other things, for an end to racial discrimination in employment by Claiborne County merchants and by the city and county governments, for desegregation of the local school system and other public facilities, and for the creation of an "officially constituted" community affairs committee.[2]

The merchants and the city and county governments did not satisfy the grievances listed in the petition. *See* App. 15b. As Respondent William H. Hay testified, "I thought that they were demanding too much too quickly." R. 14659. Thereafter, on April 1, 1966, at a meeting held in the First Baptist Church of Port Gibson, a group of several hundred Black citizens decided by voice vote to support a boycott of a number of white-owned businesses in Claiborne County in order to dramatize their grievances, and they called upon their fellow citizens to do

[2] This document, as supplemented, was quoted by both courts below. App. 10a-12a, 8b-14b.

the same. The owners of the boycotted businesses included those Respondents who had served on the mayor's bi-racial committee and other Respondents who were important civic leaders and public officials in Claiborne County.[3] The chancellor observed, "[i]t would be redundant and superfluous to recount all the testimony given by NAACP members" to the effect that "power in the community" lay with these prominent businessmen. App. 17b.

The boycott was accompanied and publicized by peaceful meetings, speeches, marches, picketing, and leaflet distribution aimed at persuading Black people not to patronize the merchants' stores. City and county law enforcement officials closely monitored all of these activities, photographing the events and tape-recording certain speeches.[4]

Marches in support of the boycott usually took place in connection with meetings of the then nascent Clai-

---

[3] Respondents Allen and Al Batten (one of the owners of Respondent Port Gibson Lumber Co.), for example, were aldermen for the City of Port Gibson. R. 15111. Robert Vaughan, another part owner and operator of Port Gibson Lumber, represented Claiborne County in the Mississippi House of Representatives. R. 15160. Respondent Abraham had served on the school board, which administered a segregated public school system, for over twenty years. R. 14906. Respondent Hay had previously served on the school board for ten years. R. 14678-79. Respondent Hudson served on the Claiborne County Democratic Executive Committee (R. 840), and considered himself a prominent white leader in Port Gibson. R. 14741.

[4] While we describe the testimony concerning these various boycott activities below, they are all graphically depicted by the photographs introduced into evidence by Respondents. *See* Exs. C-7-5, 6, 8, 10, 20, 21, 25 (R. 944-45, 947-49, 952, 954); C-9 (R. 971, 972-76); C-10 (R. 977, 978-81); C-11 (R. 982, 983-86); C-17 (R. 1051, 1052-53). (J.A. 19-22, 25-37, 40-41.) These photographs show peaceful assemblies at the First Baptist Church and the Claiborne County Courthouse, orderly marches in support of the boycott, and peaceful, nondisruptive picketing activity in Port Gibson and outlying rural areas, largely by children.

borne County Branch of the NAACP at the First Baptist Church in Port Gibson. The marchers were generally organized in single file or two abreast. R. 1127, 1469-70, 1754-61, 2040-44. Rodney Porter, the Port Gibson police chief, testified that some of the boycott leaders, including Petitioner Calvin Williams, actively cooperated with the police to ensure that the marches were at all times orderly. R. 2075, 2139. Dan McKay, the Claiborne County sheriff, testified that no one was ever arrested for unlawful conduct during the marching. R. 1126-31. Boycott leaders stationed people at street corners to ensure that the marchers would not block traffic. R. 4406-08. The merchants themselves testified that the marchers were peaceful and orderly. R. 860-62, 14791.

According to Sheriff McKay, picketing activity in support of the boycott was also orderly, and did not block traffic on the sidewalks.[5] The picketing was closely ob-

---

[5] The sheriff testified:

"Q. These marchers when they would march, I believe you said two abreast . . . , how long would it take them to go two and a half blocks there?

"A. Approximately twenty minutes.

"Q. And would they march in a violent manner, hollering and screaming, or anything like that?

"A. Very quietly.

". . . .

"Q. Now the people that you have photographed, that you identified that were marching with picket signs, were these people walking up close to the stores or were they walking away from the stores or how did they proceed on the sidewalk?

"A. They would usually walk on one side, right or left, and one abreast.

"Q. And would they gather and crowd in the doorways with these picket signs?

"A. Not to my knowledge.

"Q. As a matter of fact, would they walk on the outside of the sidewalk next to the curb as they carried these signs?

"A. Well, I would say they'd walk on one side. They wouldn't get in the middle, you know, they'd get on the outer end. They'd always walk on the outside.

"Q. They were not, as you call, blocking traffic on the sidewalk. The sidewalks are fairly wide, are they not?

served and photographed by the police. R. 10105. As the Mississippi Supreme Court observed, many of the picketers were young children (App. 13a); Chief Porter put the figure at about 60 percent. R. 2140. *See also* R. 782, 1147, 3901, 4699-4700, 13764. Picketing activity rose and fell in phase with the intensity of the boycott (R. 2023, 2028, 4736); as the owner of Respondent Claiborne Hardware Co. testified, after the early weeks beginning in April 1966, it dropped off for "a couple of years." R. 15013-16. *See also* R. 6722, 9983.

During the early weeks of the boycott, many Black persons from outlying towns and rural areas in Claiborne County who came into town to shop were unaware of the existence of a boycott. R. 649, 4733, 10119. Boycott participants stopped patrons who were going into white stores in order to communicate to them the fact that a boycott was in progress and to ask that they not patronize white businesses. R. 917-19, 2048. These participants also positioned themselves so as to be able to observe who patronized white stores; photographs depicting such observation were introduced into evidence by Respondents. Exs. C-12-1, 2, 7 (R. 987-88, 989, 992). (J.A. 38-39.) In the words of Petitioner Barbara Ellis, these "store-watchers" and other boycott participants—who included 14-15 year old girls (R. 14646-47, 14662-64)—were encouraging and "telling people that the stores were under boycott." R. 1203.

At the meetings of the NAACP in the First Baptist Church, the names of boycott violators were sometimes called out, and speeches were sometimes given in support of the boycott. From time to time during the boycott, a mimeographed newspaper entitled *Black Times* was prepared and circulated in Port Gibson, with the assistance of some of the Petitioners. *Black Times* sometimes

---

"A. Yes.

"Q. And they were not blocking the steady flow of movement there, were they?

"A. No." R. 1127-28.

published the names of Black people who had been observed trading in boycotted businesses.

At some point after the boycott began, a group of Black men in Port Gibson began an informal organization called "the Deacons." The Deacons offered physical security for members of the NAACP during their weekly meetings in the church, in light of apprehension about the possibility of violence by white persons during this period. R. 8798-8800, 8954-56, 9854-56. There is testimony that some of the Deacons dressed in black clothing and black straw hats, and they came to be known as "Black Hats." Some of the persons who were Deacons also participated in the boycott activities in Claiborne County described above.

There is testimony that boycott activities in Port Gibson intensified at two different points after April 1966. The first was April 1968, after the assassination of Dr. Martin Luther King, Jr., in Memphis. The second was in April 1969, after a young Black man named Roosevelt "Dusty" Jackson was shot and killed at his home in a scuffle with two Port Gibson police officers who had come to arrest him. That shooting was followed by a mass meeting of Black persons at the First Baptist Church. White persons, including some of the white merchants as well as the police, arrived at the church armed with guns. R. 7878, 7920-22. One Black man, Horace Lightfoot, was attacked and beaten. Shots were fired into the church where the Black persons had assembled. Petitioner Tullos Brown was wounded by gunfire, as was a Mississippi State Highway Patrolman. Weapons were found inside the church, after the shooting had stopped and the crowd had been quieted by Petitioner Evers and persuaded to return home. R. 4173-74, 4783.

The foregoing events led the Black community to demand that the two officers responsible for Jackson's killing be dismissed from the city police force. This demand

was refused. On April 21, 1969, Petitioner Charles Evers gave a speech urging intensification of the boycott in protest against these events and the lack of response by the white community. In that speech, Evers said, "If we catch you going into any of them racist white stores, we're gonna break your goddamned necks." R. 4685-87, Ex. C-43 (R. 4919, 4921-22, 4923). However, in another speech given two days earlier, which was tape-recorded by police, Evers counselled Black persons against the use of violence. Ex. C-13 (R. 998, 1005, 1091-1109).

The chancellor identified twelve acts of "enforcement" that occurred in Port Gibson or outlying areas of Claiborne County from 1966 to 1969 during the time the boycott was in effect. On the basis of these acts, he found a "thread of fear and violence" running through the boycott. App. 34b-38b. The Mississippi Supreme Court adopted the chancellor's description and quoted it verbatim. App. 15a-19a. For some of these acts, no perpetrator is identified. For others, no connection to the boycott at all—let alone to any Petitioner—is shown. Only one of these incidents—the foregoing remark by Petitioner Charles Evers—was attributed to any of the leaders of the boycott, and there is no evidence that this remark incited any violent act. Only three of the incidents associate any of the Petitioners with physical violence of any kind. See pages 28-30 *infra*.

Proceedings Below

Certain of the boycotted merchants sued in the Chancery Court for Hinds County (rather than Claiborne County, where the boycott occurred) on October 31, 1969. The suit prayed for damages and an injunction. No preliminary injunctive relief was ever sought. The merits of the case were not addressed in Chancery Court until late 1972.[6] Petitioners' special demurrers, raising

[6] Before defending on the merits, Petitioners sought an injunction in federal court against further proceedings in Chancery

the constitutional issues now before this Court (R. 346, 478), were overruled. R. 374.

Trial began in June 1973 and lasted nearly eight months. Thirteen of the merchants testified. However, the vast bulk of the 16,000 page transcript consists of the testimony of 106 of the defendants, called as adverse witnesses by counsel for Respondents. These defendants were all asked generally whether they knew what the boycott was about or agreed with its aims. They were also asked whether they knew or had heard that any of their co-defendants had been members of the NAACP, attended NAACP meetings, marched, picketed, or encouraged others not to patronize white stores. The remaining questions generally concerned whether the witnesses knew or had heard of incidents of vandalism or other unlawful acts that allegedly occurred in Port Gib-

---

Court. In federal court, these Petitioners (and other chancery defendants) urged that the merchants' suit was an effort to chill the exercise of their First Amendment rights and to harrass and destroy the Petitioner NAACP. In addition, they claimed, procedural aspects of the state court litigation were grossly unfair. As noted above, the merchants had filed their suit, not in Claiborne County where all the plaintiff businesses were located and all but a few of the defendants resided, but nearly 100 miles away in Hinds County. And, by resorting to Mississippi's non-resident attachment statute—since declared unconstitutional by both federal courts in Mississippi, *MPI Inc. v. McCullough*, 463 F. Supp. 887 (N.D. Miss. 1978); *Mississippi Chem. Corp. v. Chemical Constr. Corp.*, 444 F. Supp. 925 (S.D. Miss. 1977)—the merchants were able to invoke equity jurisdiction and thus deprive the defendants of trial by jury.

The federal court entered a preliminary injunction restraining the Chancery Court proceedings, on the theory that the merchants "seek to infringe upon [Petitioners'] First Amendment rights," and that "the prosecution of the State Action will have a chilling effect upon the exercise of those rights." *Henry v. First National Bank*, 50 F.R.D. 251, 268 (N.D. Miss. 1970). On appeal, the Fifth Circuit reversed, holding that the mere commencement of a private state tort suit had not itself involved "state action" for purposes of 28 U.S.C. § 1343(3). 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972) (*"Henry I"*).

son during the 1966 to 1970 time period. Many of the witnesses had never even heard of the incidents suggested by Respondents' counsel.

Petitioners' post-trial motions to dismiss (R. 16225, 16243) were overruled in February 1974. R. 16263, 16274. On August 19, 1976, the chancellor issued a memorandum opinion finding the boycott unlawful in its entirety and all the Petitioners liable for all the damages caused by the boycott. He awarded to these Respondents $1,250,699 in damages, statutory penalties, and attorneys' fees. The chancellor also enjoined 134 defendants, and all those confederating with them, from using physical violence and also, *inter alia*, from "persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants" as well as "picketing or patrolling" the merchants' places of business. App. 19g.

The chancellor's first ground for finding liability was that Petitioners had engaged in a civil conspiracy to commit the common law tort of interference with the businesses of the merchants. App. 38b-44b. As a second and alternative ground of liability, the chancellor found the boycott unlawful as a secondary boycott proscribed by Miss. Code Ann. § 97-23-85. App. 44b-53b. The third alternative ground of the chancellor's decision was that the boycott had violated Mississippi's statutory prohibitions against restraints of trade. App. 53b-56b.

Petitioners appealed to the Mississippi Supreme Court.[7] That court rendered its opinion and judgment on De-

---

[7] Petitioners also moved in the Mississippi Supreme Court for relief from Mississippi's 125 percent supersedeas bonding requirement. R. 16467. When that motion was denied, Petitioners applied to the United States District Court for the Northern District of Mississippi for relief. That court enjoined execution of the chancery court judgment pending appeal. *Henry v. First Nat'l Bank*, 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) (*"Henry II"*).

cember 10, 1980. The court held the Mississippi secondary boycott statute inapplicable as a ground of liability because that statute was enacted in 1968, after the boycott began, and had only prospective force. App. 22a, 27a. The court also declined to apply the Mississippi trade restraint statutes, holding that they had "no application to boycotts to achieve political goals." App. 28a. However, the court went on to hold the entire boycott unlawful as an illegal common law conspiracy. It found that the "presence of a conspiracy is beyond peradventure," and ruled that if "any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it [was] primary, secondary, economical, political, social or other. All of these factors are here present, and the boycott was illegally operated . . . ." App. 23a.

The Mississippi Supreme Court held all 92 Petitioners liable, jointly and severally, for any and all losses that resulted "from the boycott." App. 35a. It did find errors of state law in the merchants' proof of damages, and remanded for a retrial on that question. App. 35a. The court dismissed as to a number of other defendants for "insufficient proof, lack of proof, or otherwise." App. 26a. It left the chancellor's injunction untouched, holding that Petitioners had conceded that the injunctive aspects of the case were "moot." App. 5a.[8] Petitioners

[8] The grant of the injunction was specifically assigned as error below, and Petitioners in their briefs below urged the dissolution of the chancellor's entire decree. In so doing, they used the word "moot" only in their argument that, because the boycott was then inactive, there was no longer any basis for granting injunctive relief as a matter of state law. The injunction stands, and if left intact by this Court it will operate permanently to restrain the exercise of First Amendment rights by these Petitioners and all persons deemed to be "confederated" with them. It is not moot. "As a general rule, 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot.' " *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). *See also Liner v. Jafco, Inc.*, 375 U.S. 301 (1964).

filed a petition for rehearing on the injunction issues, which was denied without opinion on March 4, 1981. App. E, H.

SUMMARY OF ARGUMENT

The decision of the Mississippi Supreme Court appears to rest entirely on the premise that associations of persons to achieve lawful objectives become illegal conspiracies actionable at common law whenever "force, violence, and threats" are "present." The court's only reference to the relevance of the First Amendment is its statement that it knows of "no decision that free speech guaranteed by the First Amendment includes in its protection the right to commit crime." But the court did not find that any of the Petitioners had committed a crime.

The opinion below is also far from clear about what conduct the court found to constitute "force, violence, and threats." The opinion adopts the conclusory findings of the chancellor that "certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers." But the examples given in the chancellor's next sentences, also adopted and quoted in the opinion below, are that "some of the devices used" were "[i]ntimidation, threats, social ostracism, vilification, and traduction" and the stationing of "enforcers" in the vicinity of white-owned businesses. None of these "devices" describes an act of physical violence.

I.

It may have been the view of the Mississippi Supreme Court that what made the boycott an unlawful conspiracy was that its leaders had agreed to enforce it, and that some of the enforcers had intimidated, threatened, ostracized, vilified, and traduced Black persons into withholding their patronage.

In Part I of this Argument, we show that if this was the view of the court below, its judgment violates the

First Amendment. A boycott enforced by non-violent means is a constitutionally protected form of petition, speech, and assembly. It is a form that was employed by the Framers themselves to seek changes in onerous British laws such as the Stamp and Townshend Acts. Colonial boycott agreements regularly included enforcement clauses providing for the denunciation and boycott of colonists who refused to abide by the agreements. These clauses were supported by Washington, Jefferson and Madison, among others. And they were enforced by such tactics as "intimidation, threats, ostracism, vilification, and traduction." The boycott movement culminated in 1774 in the First Continental Congress—an unofficial assembly for the redress of grievances against the Intolerable Acts enacted by Parliament in reprisal for the Boston Tea Party. That Congress adopted an "Association" calling on all colonial citizens to adopt a policy including the nonimportation of any goods from British merchants, and urged the denunciation and boycott of all who refused to comply. Washington and Adams signed the Association, and Jefferson and Madison became members of committees to enforce it.

When the Framers adopted the Bill of Rights, they must have intended that the guarantees of free speech and assembly and of petition for redress of grievances would cover boycotts of the type in which they themselves had engaged. Indeed, at the very time when the Federalist was being written and the Constitution was being ratified, Alexander Hamilton and John Jay were leading the New York Society for Promoting the Manumission of Slaves in a boycott of New York merchants who engaged in the slave trade.

No decision of this Court has squarely ruled on the protection the First Amendment affords to an enforced political boycott, such as the civil rights boycott involved here. But true to the colonial tradition, every element of a political boycott enforced by non-violent means—including what some would call intimidation, threats,

social ostracism, vilification, and traduction—has been sustained under closely analogous decisions of this Court. And an unbroken line of decisions of the United States Court of Appeals for the Fifth Circuit, including one involving the boycott in this very case, has upheld the use of these non-violent methods to enforce a political boycott.

II.

Alternatively, the Mississippi Supreme Court may have believed that the "presence" during the boycott of a few acts or threats of physical violence was a sufficient ground for depriving all Petitioners of their First Amendment protections. In Part II of this Argument, we show that any such ground is also untenable either on the facts of record or as a matter of First Amendment law.

The chancellor concluded that the "thread of fear and violence is woven throughout this case." This conclusion ignores most of the testimony; witness after witness testified that in 1966 Black persons in Claiborne county were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further dealings with Respondents in this case. The chancellor's "thread" is composed instead of twelve incidents of "enforcement." Most of these incidents are utterly unconnected to the boycott, and in fact many of the witnesses had never even heard of them. The few remaining incidents were either non-violent (one was merely Petitioner NAACP's alleged provision of attorneys to defend arrested Black persons) or unconnected with any Petitioner. In only three of these incidents was *any* Petitioner even suggested by the chancellor to have been involved in violence. In one of the three, a criminal jury was unable to agree and the courts below made no effort to resolve the conflicting testimony. In a second, the violence consisted of trampling a flower garden. In the third, the accused Petitioner testified that the "vic-

tim" had pulled a gun on him (R. 5019), and the trial judge did not resolve the conflicting testimony as to what actually happened. This "thread" is all that ties any unlawful activity to this boycott or the claims of lost patronage made by Respondents.

There is no finding that any of the other individual Petitioners, or the Petitioner NAACP, ever committed, authorized, approved, or condoned any specific act of physical violence or any program of physical violence. Of the 91 individual Petitioners, 30 participated only by attending NAACP meetings and/or marching to show their support for the boycott, and 39 more participated further only in picketing, distributing leaflets, and other forms of non-violent speech. On this record, the First Amendment does not permit the attribution of vicarious liability to all individual Petitioners, or to the NAACP, for the one, two, or three acts of physical violence even arguably committed by some other participant in connection with the boycott.

In any event, the court below erred in allowing damages to be levied against all Petitioners for all the consequences of the boycott, despite the court's own findings that the non-violent aspects of the boycott had been responsible for a large part of its success. First Amendment rights of expression and association cannot be chilled by overbroad adjudications of liability for the harm done by protected conduct, merely because a few episodes of unprotected conduct were also "present."

III.

The decision below also transgressed the First Amendment by enjoining Petitioners from engaging in further peaceful boycott activity. In Part III of this Argument, we show that the court below upheld an injunction against "persuading, soliciting, [and] advising . . . any person to withdraw and withhold his or her patronage or to cease trading with . . . complainants," or against stationing "enforcers" near the merchants' premises. Even

if one assumes the validity of the finding that some acts of physical violence were "present" during the boycott, an injunction so sweeping is plainly void.

ARGUMENT

I. BOYCOTTS SEEKING REDRESS OF POLITICAL GRIEVANCES ARE CLASSIC AMERICAN FORMS OF PETITION AND ASSEMBLY, AND NONVIOLENT ACTIVITIES TO SUPPORT OR ENFORCE SUCH BOYCOTTS ARE PROTECTED BY THE FIRST AMENDMENT.

As this Court has very recently observed, "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process."[9] The Port Gibson boycott was in the mainstream of this American political tradition. As this Court has consistently held, marching, picketing, speeches, distribution of leaflets and efforts at persuasion of the type that accompanied the boycott are activities that lie at the center of the First Amendment.

A. Political Boycott Activities Have Formed an Integral Part of the American Political Process for Over Two Hundred Years.

A political boycott led by two of the three authors of the Federalist was in progress at the very time the First Amendment was adopted. In order to support compliance with New York's 1788 prohibition of the slave trade, the New York Society for Promoting the Manumission of Slaves sponsored a boycott of businessmen who participated in that trade. John Jay was the Society's first president and Alexander Hamilton was its first secretary.[10]

---

[9] *Citizens Against Rent Control v. City of Berkeley*, 102 S. Ct. 434, 436 (1981).

[10] *See* A.L. HIGGINBOTHAM, IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD 140, 142 (1978); E. MCMANUS, A HISTORY OF NEGRO SLAVERY IN NEW YORK 168-71 (1966).

Although the word "boycott" would not be coined for another 100 years,[11] this form of political protest was well known, understood, and approved by the Framers, including the third Federalist author, James Madison. Its use dates back at least as far as 1765-66, when colonial petitions that Parliament repeal the Stamp Act were rejected out of hand. The colonists developed the boycott of British merchants as a more demonstrative, but nevertheless peaceful, form of assembly and petition. In the Stamp Act boycott, the merchants of Boston, New York, Philadelphia, and other cities signed written agreements undertaking not to import goods from Britain until Parliament repealed the measure.[12]

The Stamp Act was repealed, but the very next year Parliament promulgated the Townshend Acts, which imposed duties on glass, lead, paint, paper and tea imported into the American colonies. Merchants throughout twelve colonies again resorted to non-importation agreements. The new agreements were signed not only by merchants but also by persons of other occupations. These agreements generally included enforcement provisions authorizing personal ostracism and economic boycotts of persons who refused to abide by the agreements.[13] In 1770, Parliament repealed most of the Townshend duties, except for the tax on tea.

---

[11] The term "boycott" first came into use in 1880 to describe actions taken by the Irish Land League toward a Captain Boycott and certain other British landlords. 1 OXFORD ENGLISH DICTIONARY 260, cols. 5 & 6 (compact ed. 1971).

[12] *See, e.g.*, C. ANDREWS, THE BOSTON MERCHANTS AND THE NON-IMPORTATION MOVEMENT 40-43 (1968 ed.); A. SCHLESINGER, THE COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION 76-83 (1939 ed.); C. UBBELOHDE, THE VICE-ADMIRALTY COURTS AND THE AMERICAN REVOLUTION 89-90 (1960).

[13] *See* ANDREWS at 43-76; SCHLESINGER at 113-196; UBBELOHDE at 115-16. In Massachusetts, for example, thousands of handbills were dispersed in May 1769 advising all persons to shun the shops of specified colonial merchants. SCHLESINGER at 158-59. At a meet-

In 1773 Parliament enacted a new Tea Act, granting the East India Company a tea monopoly in the American colonies and empowering it to deal directly with colonial retailers, thus depriving many American merchant middlemen of a profitable line of business. This led to a series of new efforts to boycott all imports of tea, and the enforcement of this boycott resulted in the Boston Tea Party. In reprisal, Parliament in 1774 passed the Intolerable Acts, which closed the port of Boston, made major changes in the government of Massachusetts Bay, and allowed trials in England for crimes allegedly committed in Massachusetts. The colonists responded with yet another round of non-importation agreements and by electing delegates to an unofficial Continental Congress in Philadelphia.[14] In September 1774, the Congress approved the Continental Association, a wide-ranging non-importation, non-exportation agreement which was to be effective until Parliament granted the colonies' request for relief.[15] Once again, committees to enforce the boycott were chosen in every community.[16]

In colonial America non-importation agreements with specific political goals were organized by hundreds and supported by thousands of citizens. George Washington supported and helped draft (with George Mason) a non-importation agreement signed by the members of the Virginia House of Burgesses in 1769; as a Virginia delegate to the First Continental Congress, he signed the Continental Association.[17] Thomas Jefferson firmly sup-

---

ing in Faneuil Hall, participants voted that those who persisted in defying the agreement "must be considered as Enemies to the Constitution of their Country." *Id.* at 163-64.

[14] *See, e.g.*, SCHLESINGER at 305-92.

[15] *See id.* at 393-473; UBBELOHDE at 181-82.

[16] *See* SCHLESINGER at 473-535.

[17] J. FLEXNER, GEORGE WASHINGTON: THE FORGE OF EXPERIENCE (1732-1775) 311-14, 324-28 (1965); D. MALONE, JEFFERSON THE VIRGINIAN 137 (1948).

ported the Virginia agreements of 1769-70 and drafted the Virginia non-importation, non-exportation agreement of 1774, which served as the model for the Continental Association. Jefferson and Madison served on Virginia committees to enforce the Association.[18] John Hancock played an important role in enforcing the boycott inspired by the Townshend Act.[19] And Benjamin Franklin, John Adams, John Jay, John Dickinson, Patrick Henry, and Richard Henry Lee all were prominent supporters of the Continental Association as well as the earlier agreements.[20]

Those founders of our country believed their boycott activities were lawful even under colonial rule. They would have been shocked by the notion that, having won their liberty, they had adopted a Bill of Rights that did not safeguard the very type of assembly and petition for redress of grievances they had used themselves. The supporters of the non-importation agreements considered them to be soundly "constitutional modes of obtaining relief," [21] and the one means short of armed conflict that might induce Parliament to grant the political reforms they demanded.[22] The Framers of the Constitution plainly regarded a boycott of merchants, peaceably enforced against non-participants, as a legitimate and important method of protesting against unjust government action. In adopting the First Amendment, they plainly intended to preserve the right to employ that same type of assembly and petition to redress future grievances against the new government they were forming.

---

[18] H. COMMAGER, DOCUMENTS OF AMERICAN HISTORY 77-78, 80 (1963 ed.); MALONE at 137-38, 192 (Jefferson); R. KETCHAM, JAMES MADISON: A BIOGRAPHY 61, 63 (1971) (Madison).

[19] ANDREWS at 44.

[20] *See* SCHLESINGER 220 (Franklin); 416 (Adams); 415 (Jay); 114, 118 (Dickinson); 136 (Henry); 136, 362-64, 419 (Lee).

[21] SCHLESINGER at 96.

[22] *See* FLEXNER at 311-12.

There is not the slightest doubt that the colonial boycotts of British merchants were enforced boycotts. The "devices" described by the chancellor as employed in this case—"intimidation, threats, social ostracism, vilification, and traduction"—were also employed by our colonial forefathers. No evidence of "enforcement" in the present record is more explicit than paragraph 11 of the Association adopted by the First Continental Congress:

> "11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to that end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty; and thenceforth we respectively will break off all dealings with him or her." [23]

Political boycotts have continued to play an important role in the peaceful resolution of political differences in this country. In the years before the Civil War, abolitionists followed the precedent of the Jay-Hamilton New York Manumission Society and organized a boycott of slave-made goods. H. LAIDLER, BOYCOTTS AND THE LABOR STRUGGLE 55 (1913). Two generations later, Consumers' Leagues organized by the Progressives urged boycotts of certain "sweat-shop" industries. *Id.* at 33-35. The political boycott as a civil rights vehicle gained renewed attention in 1955, when Rosa Parks, Dr. Martin Luther King, Jr., Petitioner NAACP, and thousands of Black persons in Montgomery began a boycott of that city's

---

[23] The full text of the Association is reprinted as an Appendix to this brief.

bus system in a successful effort to obtain its desegregation. R. KLUGER, SIMPLE JUSTICE 749-50 (1976). Just last year, the Eighth Circuit held immune from antitrust and tort liability the National Organization for Women's boycott of hotels and other private facilities in states that have not ratified the proposed Equal Rights Amendment. *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

B. Peaceful Activities To Support and Enforce Civil Rights Boycotts Are Protected by the First Amendment.

Like many political boycotts that preceded it, the Claiborne County boycott involved the exercise of each of the "cognate" rights of political participation—speech, assembly, association, and petition for redress of grievances—articulated by this Court in *De Jonge v. Oregon*, 299 U.S. 353, 364-66 (1937), and *Thomas v. Collins*, 323 U.S. 516, 530 (1945):

> "It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights . . . and therefore are united in the First [Amendment's] assurance. *Cf.* 1 Annals of Congress 759-60."

As the Court also observed in *Collins*, the First Amendment's principle of "'free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts." *Id.* at 537. As the Court stated in *NAACP v. Button*, 371 U.S. 415, 429 (1963):

> "[A]bstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion."

Efforts to persuade by publishing and distributing newspapers and leaflets, holding meetings, marching and communicating in the public streets, and peaceful picketing have long been held protected by the First Amendment. *E.g., Edwards v. South Carolina*, 372 U.S. 229 (1963) (marching and demonstrating); *Hague v. CIO*, 307 U.S. 496 (1939) (use of streets and other public places); *Schneider v. State*, 308 U.S. 147 (1939) (distributing leaflets); *Thornhill v. Alabama*, 310 U.S. 88 (1940) (peaceful picketing). When exercised to petition for redress of grievances involving "public issues," such methods of First Amendment expression and association "res[t] on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 466-67 (1980).

In a series of important cases beginning before the Claiborne County boycott, the United States Court of Appeals for the Fifth Circuit applied these established First Amendment principles to boycotts organized during the civil rights movement and contemporaneous with the almost identical activities involved in this case.[24] Those cases confirmed that the First Amendment protects peaceful picketing of businesses undertaken with the object of eliminating racial discrimination in the stores themselves. *Smith v. Grady*, 411 F.2d 181 (5th Cir. 1969); *NAACP v. Thompson*, 357 F.2d 831 (5th Cir.), *cert. denied*, 385 U.S. 820 (1966); *Kelly v. Page*, 335 F.2d 114 (5th Cir. 1964). *See Smith v. City of Montgomery*, 251 F. Supp. 849 (M.D. Ala. 1966); *In re Wright*, 251 F. Supp. 880 (M.D. Ala. 1965); *McMeans v. Mayor's Court*, 247 F. Supp. 606 (M.D. Ala. 1965). In *Machesky*

---

[24] For a comprehensive analysis of the state and federal court decisions concerning political boycotts, and a discussion of the chancellor's opinion in this case, see Note, *Political Boycott Activity and the First Amendment*, 91 HARV. L. REV. 659 (1978). *See also* Comment, *The Consumer Boycott*, 42 MISS. L.J. 226 (1971); Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 YALE L.J. 397 (1957).

v. Bizzell, 414 F.2d 283 (5th Cir. 1969), the court held that the First Amendment "clear[ly]" (*id.* at 287) protected a boycott not limited to redress of discrimination in the store itself, but, as in this case, seeking

> "equal employment by the city, equal job opportunities in business, use of courtesy titles, improved city services in Negro areas, fair treatment by police, representation on various public boards and agencies, and dialogue with elected officials." *Id.* at 285.

In *Machesky*, Judge Bell found it dispositive that the Greenwood, Mississippi, civil rights movement was exercising "public rights"—"rights which determine the composition of government and the direction of government policy." *Id.* at 288-89.[25]

In upholding a preliminary injunction against enforcement of the supersedeas bonding requirement in this very case, the Fifth Circuit observed:

> "At the heart of the Chancery Court's opinion lies the belief that the mere organization of the boycott and every activity undertaken in support thereof could be subject to judicial prohibition under state law. This view accords insufficient weight to the First Amendment's protection of political speech and association . . . . [The] dispute with the white merchants and city government of Port Gibson and all of the picketing, speeches and other communication associated with the boycott were directed to the

---

[25] In *Machesky*, an action brought pursuant to 42 U.S.C. § 1983, the federal plaintiffs were state court defendants who sought a federal injunction against pending state court proceedings. The case was decided prior to *Mitchum v. Foster*, 407 U.S. 225 (1972)—holding Section 1983 to be an exception to the anti-injunction provisions of 28 U.S.C. § 2283—but Judge Bell recognized the federalism concerns involved in such federal court intervention in state court proceedings. Accordingly, he held Section 2283 should give way only "in those extraordinary cases"—such as *Machesky*—"where the federal injunction is necessary to vindicate *clear First Amendment rights*." 414 F.2d at 287 (emphasis supplied).

> elimination of racial discrimination in the town. This differentiates this case from a boycott organized for economic ends, for speech to protest racial discrimination is essential political speech lying at the core of the First Amendment."

Henry v. First Nat'l Bank, 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) ("*Henry II*").[26]

In describing the boycott in this case, the Mississippi Supreme Court referred to Miss. Code Ann. § 97-23-83, which makes it a criminal offense "to threaten with bodily harm, intimidate or coerce another person to prevent said person" from doing business with another. The court held that statute was violated by "the coercion, intimidation, and threats which were a part of the boycott activity." App. 24a. Apart from the fact that the court did not identify any Petitioner or anyone else as a violator, the statute itself would ban peaceful nonviolent efforts to enforce a boycott and is clearly void for overbreadth.

When a political boycott is enforced, as here, by such nonviolent methods as "social ostracism, vilification, and traduction," use of these methods might conceivably result in actionable libel or slander, but does not by itself create liability for any resulting business harm. If the First Amendment permitted only polite discourse upon abstract intellectual propositions, it would be of little value to American society. As this Court noted in *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971):

---

[26] *See also NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 302 (1964), where a unanimous Court rejected Alabama's effort to oust the NAACP from that State based upon the claim (among others) that it was "'organizing, supporting and financing an illegal boycott'" of Montgomery's bus system. In dictum, Justice Harlan characterized as "doubtful" the "assumption that an organized refusal to ride on Montgomery's buses in protest against a policy of racial segregation might, without more, in some circumstances violate a valid state law." *Id.* at 307.

> "In sustaining the injunction, . . . the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to 'force' respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. See *Schneider v. State, supra; Thornhill v. Alabama*, 310 U.S. 88 (1940). Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability."

Similarly, the "vilification" of persons as "Uncle Toms" is entitled to no less protection than that afforded the vilification of employees as "scabs" in *Letter Carriers Branch 496 v. Austin*, 418 U.S. 264 (1974).[27] Like other peaceful exercises of Petitioners' First Amendment rights to "enforce" the boycott, this sort of vilification and "traduction" cannot form the basis for liability in this case.

---

[27] Although in *Letter Carriers* the issue was whether state tort law was preempted by provisions of federal labor law, the statutory protection was simply a codification of this court's constitutional principles enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *See* 418 U.S. at 280-81, *citing Linn v. Plant Guard Workers*, 383 U.S. 53 (1966).

II. THE MISSISSIPPI SUPREME COURT'S RULING THAT THE ENTIRE BOYCOTT WAS UNLAWFUL AND THAT ALL BOYCOTT PARTICIPANTS WERE VICARIOUSLY LIABLE BECAUSE A FEW INCIDENTS OF "FORCE, VIOLENCE AND THREATS" WERE "PRESENT" DURING THE BOYCOTT'S MULTI-YEAR DURATION IS FACTUALLY UNSUPPORTED AND IN ANY EVENT IS CONSTITUTIONALLY WRONG.

The Mississippi Supreme Court's conclusion that the entire boycott was an unlawful conspiracy for which all Petitioners were liable may rest solely on its finding that a few incidents of physical violence were "present." If so, that conclusion cannot stand either on the facts of record[28] or as a proposition of First Amendment law. Unless this Court reverses, every person engaged in political protest runs the risk of being made an insurer for the actions of everyone else who participates. Any such rule would impermissibly chill the exercise of the vital First Amendment rights of expression and association described above.

A. The Claiborne County Boycott Was a Peaceful and Voluntary Boycott. Most of the Sporadic Incidents of Violence That Occurred During the Time of the Boycott Were Not Found To Have Been Committed by Identified Boycott Participants, and Were Not a Principal Cause of Its Success or of any Business Harm to Respondents.

As the merchants themselves conceded in the court below,[29] witness after witness testified that in 1966 Black

[28] In First Amendment cases on review from state courts, this Court "of course make[s] an examination of the evidence to ascertain independently whether the right has been violated." *Feiner v. New York*, 340 U.S. 315, 316 (1951). *See also id.* at 322 n.4 (Black, J., dissenting); *In re Primus*, 436 U.S. 412, 434 (1978); *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-85 (1964); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963).

[29] Brief for Appellees Claiborne Hardware Co., *et al.* at 12: "Most of the witnesses testified that they voluntarily went along with the NAACP and their fellow black citizens in honoring and observing the boycott because they wanted the boycott."

persons in Claiborne County were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further economic dealings with Respondents. *E.g.*, R. 5855-56, 6066-67, 6227, 6641, 6737, 6848, 6864, 12419, 13543-44. As one of the employees of the county Headstart Program testified:

> "I just stayed out of the stores, because I had my own personal reasons to stay out of the stores. There were some things I really wanted, and the things I wanted were the right to vote, the right to have a title—Mrs. or Mr. or whatever I am, and not uncle or aunt, boy or girl. So that's what I wanted. And if I wanted a job—a qualified job, I wanted to have the opportunity to be hired. Not hired because I'm black or white, but just hired." R. 15476.

Neither the Mississippi Supreme Court nor the chancellor made any finding that violence was critical to the effectiveness of this boycott. While the former adopted the latter's finding that "the volition of many black persons was overcome out of sheer fear," the context suggests that this may have meant fear of "ostracism, vilification and traduction" rather than fear of physical violence. In any event, the record does not support any finding that fear of any type of conduct by other boycott participants was important to the boycott's success.

The "thread of fear and violence" in this case was woven by counsel for Respondents in their suggestive examination of 106 individual defendants. These defendants (including many of these Petitioners) were subjected to leading, repetitive, browbeating, and almost completely unchecked examination.[30] These witnesses were asked over and over whether they knew or had

---

[30] One example, perhaps the most egregious, is nevertheless illustrative of the conduct of the adverse examination. Petitioner Griffin, who was 59 years old at the time of trial, was asked by counsel for Respondents, "Have you ever had a frontal lobotomy?" R. 2335. The objection was overruled. R. 2335.

heard of the same handful of incidents of unlawful activity alleged to have occurred in Port Gibson from 1966 to 1970. In some cases, there was never any foundational evidence that unlawful activity ever took place.[31] Most of the defendants (and the few other non-party witnesses called by Respondents) testified that they did not know about and had never heard of most of these incidents. *E.g.*, R. 4623-32; 5771-75; 5898-5901; 5987-93; 6129-37; 6621-26; 6790-93; 6966-70; 7658-62; 7855; 7905; 8052-60; 8276-81; 8497-8500; 9058-68; 9710-12; 10517-23; 11705-08; 11955-66; 12088-93; 12884-92; 13128-34; 13426-46. On the contrary, the record establishes with remarkable clarity the general *absence* of fear in the community.[32]

In fact, out of the entire 16,000 pages of testimony adduced in this case, the chancellor identified only twelve incidents of "enforcement" activity even arguably connected to the boycott, which the Mississippi Supreme Court quoted verbatim. App. 34b-37b, 15a-18a.

Only three of these episodes involving physical violence were connected by the chancellor to any of the Pe-

---

[31] For example, Petitioner Katie Wells, among other witnesses, was asked

> "Q. Did you hear about [Willie Myles'] house being burned down because he violated the boycott?
> "A. I sure didn't." R. 4208.

Myles himself testified that his house burned down before the boycott ever began. R. 13773.

[32] *E.g.*, the testimony of Sara Currie (R. 6192), Amos Newsome (R. 6607-08), Clyde Harvey (R. 6850), John Durham (R. 6963-64), Horace Lightfoot (R. 7154-59), Mary Lee Moore (R. 7536-37), Alonzo Atlas (R. 8336), William Owens (R. 8496-97), Eddie Burrell (R. 9057-58), Mary Ella Dee (R. 9501), Calvin Blackburn (R. 11562), Willie Beasley (R. 12088), Ernest Brown (R. 12447), Albert Jackson (R. 12574-75), Jasper Coleman (R. 13789-91), Laura Cullins (R. 14015-18), Geneva Durham (R. 11708-09), Ira Thomas (R. 13346-47), Harvey Ellis (R. 11953) and Helen Beasley (R. 11987).

titioners; in two of these cases, the chancellor failed to make any findings identifying who had committed the act.

(1) James Gilmore asserted that shots were fired into his house from a car in which three Petitioners were riding on August 22, 1966, and that this incident occurred because he had continued to trade in white stores. But a criminal conviction for this incident was reversed on appeal, retrial resulted in a hung jury, and the chancellor never resolved the question of the identity of the assailant. App. 16a.

(2) The chancellor noted that Petitioner James Bailey warned Willie Butler about not observing the boycott and that, when she continued, he "destroyed her flower garden by way of punishing her." App. 17a. The only testimony about this incident was that of Bailey himself. His testimony was that nobody told him to tear up the flowers, that Mrs. Butler continued to buy groceries from white merchants, and that, for all Bailey knew, she did not even know that he had pulled up her flowers. R. 3732, 3741, 3660.

(3) The chancellor's description of Emerson Davis' testimony contained one incident completely unconnected to the boycott; another involving protected activity; and only one arguably involving unlawful acts related to the boycott. The chancellor referred to Davis' testimony that James Bailey said that he was going to kill Davis. But this episode is not connected to the boycott; Davis testified without contradiction that this grew out of an argument he and Bailey had had. Davis testified that Black people called him an "Uncle Tom"—before and after he refused to join the boycott. This is protected speech, and the fact that it preceded the boycott makes it irrelevant anyway. Finally, the chancellor referred to Davis' testimony that two Petitioners—along with three other persons—beat him up because he did not observe the boycott. But Rudy Shields, one of the accused Peti-

tioners, testified that the fight occurred because Davis had pulled a gun on him (R. 5019); Davis himself testified that during the course of this episode he was carrying both a knife and a gun. R. 13868-70. The chancellor did not resolve this conflicting testimony.

The remaining incidents lack any significance. In some, no act of physical violence is described. In none is any individual Petitioner identified as having committed any alleged unlawful act.

(4) The chancellor evidently concluded that Jasper Coleman's tires were slashed by unnamed persons because he did not observe the boycott. App. 18a. The only testimony on this incident comes from Coleman. He testified that his tires were slashed when he left his car in front of someone else's house for an all-night poker game. R. 13792. Several weeks later he heard a *rumor* that this was somehow related to the boycott. R. 13796. However, Coleman testified that he had never been threatened about trading with the white merchants (R. 13791, 13798); that he was not afraid to trade with the white merchants (R. 13782, 13791); and that he continued to trade with the white merchants. R. 13796-97.

(5) In the Laura Cullins incident, the chancellor found that "shotgun pellets were fired into her home." App. 16a. He implied, but did not find, that the shots were fired because she was not observing the boycott. Nor did he find who fired the shots. Laura Cullins testified that she had no idea who had done so (R. 14014) and that in any case, she was not intimidated by it. R. 14011-14.

(6) To the same effect is the chancellor's treatment of damage to Muriel Cullins' car. App. 16a-17a. Again, there is no evidence to support any inference that this vandalism was related to the boycott. Muriel Cullins testified that he did not know who damaged his car and that he only "assumed" that it was related to the boycott. R. 14063.

(7) Eddie Lewis (App. 18a) testified that someone never a defendant in this case stole a half-pint of whisky from him that he had bought from a white liquor store. R. 13742-44.

(8) The chancellor stated that "a carload of young blacks began following" Willie Myles, but he did not indicate why, and the young blacks were never identified. App. 18a. In fact, although Myles was told by someone else that these persons followed him because he traded in white stores (R. 13778-79), Myles himself testified that they did not even live in Claiborne County. R. 13732-33.

(9) The chancellor described a purported attempt by "store watchers" to prevent Mrs. Cox from entering the O. K. Cleaners. Mrs. Cox' testimony of that "incident" was that she and her husband drove to O. K. Cleaners and she walked over to enter the cleaners. Outside the cleaners she saw someone she knew and she asked that Black person if she should go in. The person advised her not to, and she went and told her husband what had occurred. She testified that she was not afraid. Without anything more occurring, Mr. Cox went and got a policeman, who escorted Mrs. Cox into the cleaners. R. 13628, 13671-73. No act or threat of physical violence occurred. The chancellor also states that shots were fired into the Cox home and at Mr. Cox, but he does not find who fired them. App. 17a.

(10) The chancellor states that "there is evidence in the record" that Preacher White was beaten for not honoring the boycott. App. 17a-18a. Preacher White died before trial. There is no competent evidence that this incident ever took place or, if it did, that it was linked with any Petitioner. As the chancellor himself comments: "Mrs. Leesco Guster, one of the appellants, testifying as to Preacher White's alleged experience as a boycott breaker, said, 'It was just talk . . .'" App. 19a.

(11) The chancellor sought to link these sporadic, and largely unattributed, events into a coherent pattern by repeated reference to Charles Evers' April 1969 remark that "If we catch any of you going in any of them racist stores, we're gonna break your damn neck." *See* App. 27b. This emotional rhetoric, employed in a public speech following the shock of Dusty Jackson's killing in an encounter with white policemen, cannot serve the purpose assigned to it.[33] Evers' tape-recorded speech two days earlier, also transcribed in the record, specifically counsels Black persons against the use of violence in the strongest terms. Ex. C-13 (R. 998, 1005, 1091-1109). Moreover, this April 1969 remark postdates every incident referred to by the chancellor, and thus hardly serves the unifying purpose the chancellor consistently attributed to it.[34] In any event, this Court has recognized that even highly charged political rhetoric about emotional political issues does not lose its First Amendment protection. *Watts v. United States*, 394 U.S. 705, 708 (1969).

(12) The chancellor and the Mississippi Supreme Court apparently thought the fact that the NAACP provided attorneys to arrested blacks was evidence of improper and perhaps unlawful behavior. App. 19a. If so, it is an astonishing idea. Ascribing liability to the organization that provides a lawyer to boycott participants accused of

---

[33] This shooting also had its colonial parallel in the Boston Massacre of 1769, which began with the actions of "irresponsible youths on the street; but it closed with the fatal shooting of five men and the wounding of several others by the [British] soldiers." SCHLESINGER at 180. "The intense feeling aroused by the Massacre undoubtedly put new life into the non-importation cause in New England . . . ." *Id.* at 181.

[34] One witness, Sheriff McKay, testified that Evers also employed an identical remark in the April 1, 1966 speech launching the boycott. This testimony is uncorroborated by that of any other witness, while the April 1969 remark is corroborated by contemporaneous documentary evidence (Exhibit C-43; R. 4919, 4921-22, 4923), as well as testimony of countless witnesses. The Mississippi Supreme Court avoided dating the remark. *See* App. 19a.

a crime would amount to an effective denial of the First Amendment right of free association, *see NAACP v. Button*, 371 U.S. 415 (1963), and make a mockery of the Sixth Amendment right to counsel.[35]

The foregoing incidents, which appear to be nothing more than random entries in the Claiborne County police blotter over a period of at least three years, constitute the sole "thread" by which the chancellor and the Mississippi Supreme Court tied allegedly unlawful activity to the Claiborne County boycott. As we have shown above, this thread is thin indeed. The courts below found only one unlawful act to have been committed by any of these Petitioners—the trampling of a flower garden unbeknownst to its owner or, apparently, to anyone else. This action hardly proved instrumental to the success of the boycott, and indeed none of these incidents (whoever may have been responsible for them) were ever shown to have caused the "victims" to have stopped patronizing Respondents' stores.[36] The plain fact is that the success of the boycott was a direct result of the exercise of the peaceful forms of First Amendment activity described above.

---

[35] This is not the first time the NAACP or its officers or representatives have sought the vindication of this Court for the exercise of protected rights of associational expression on their own behalf and on behalf of those who seek peacefully to advance the goals of racial equality under the law. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *NAACP v. Button*, 371 U.S. 415 (1963); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288 (1964).

[36] Of the eleven alleged "victims" of boycott-related violence or threats, seven testified that they continued to trade with the white merchants: Gilmore (R. 13725), L. Cullins (R. 13996), M. Cullins (R. 14038, 14099), Myles (R. 13751-52), Coleman (R. 13782), Davis (R. 13866), and Lewis (R. 13744). There is no evidence whether any of the remaining four ceased trading with white merchants, or if so, for what reason.

B. Most of the 91 Individual Petitioners and Petitioner NAACP Engaged Solely in Peaceful Boycott Activities, and May Not Constitutionally Be Held Liable for Any Tortious Acts of a Few.

Twelve unlawful acts committed by a handful of the participants in the boycott, let alone one or a few, would not be constitutionally sufficient to support the ruling of the court below that the entire boycott was unlawful and that all the participant Petitioners were liable in damages for any resulting harm. As to 30 of the 91 individual Petitioners, there is no evidence except that they were NAACP members or attended NAACP meetings, refused to patronize some or all of the Respondents' stores, or participated in one or more marches.[37] For

---

[37] *I.e.*, Kenneth Barber, Helen Beasley, Calvin Blackburn, Irna Rae Camphor, W. E. (Billy) Camphor, Alberta Coleman, Charles Davis, Mary Ella Dee, Geneva Durham, Johnny Frank Durham, Willie Jackson, Jesse Johnson, Roscoe Johnson, Bernice Lee, A. E. (Edward) Lee, Margaret Liggins, Mary Lee Moore, Amos Newsome, Leona Owens, Even Roberson, William (Willie) Roberson, Mary Ross, Odessa Ross, William Matt Ross, Oliver Shinall, Ira Thomas, Carl Thompson, Jr., Alex Warner, Ernestine Williams, and Arthur Wyatt.

For example, Calvin Blackburn, an NAACP member, honored the boycott, and appears to have marched and to have helped keep marches orderly. R. 1252, 2073, 11557-58. Irma Rae Camphor was an NAACP member but indicated that she attended only two or three meetings. R. 7472. She appears to have honored the boycott and participated in the April 1969 Dusty Jackson march, and does not appear to have picketed or watched stores. R. 4439-40, 7475, 7486. W. E. Camphor, retired school teacher and NAACP member since 1937, honored the boycott and marched but apparently did not picket. R. 4440, 5852-53, 5868. Roscoe Johnson was an NAACP member, attended meetings, boycotted, and participated in the April 1, 1966 march but did not picket or watch stores. R. 1870-71, 4464, 10022, 12822, 12825, 12828, 12844. Amos Newsome was an NAACP member, attended NAACP meetings, and appears to have supported the boycott; there is no evidence that he marched, picketed, or watched stores. R. 6561-62, 6575-78, 6609, 6615, 6627, 6677, 8654. Matt Ross, vice president of the Claiborne County NAACP chapter (R. 10642), was a leader in the boycott movement and marched at least twice. R. 4483, 6679. Oliver Shinall did not testify; there was some testimony that he partici-

another 39 of the individual Petitioners, the only other evidence is that they engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets.[38] As for the remaining individual Petitioners about whom there is some record evidence—competent or not—of involvement in any arguably unlawful activity, the case

---

pated in the boycott and two marches. R. 6680. Carl Thompson, Jr., the funeral director, was an NAACP member since the 1950's. R. 1286-87. He boycotted, and Police Chief Porter says he marched. R. 2074.

[38] *I.e.*, Alonzo Atlas, Bill Beasley, Marjorie Brandon, Janie Brown, Eddie Burrell, James Burrell, Robert Butler, Jr., Arthur Lee Camphor, Charles Collier, James Collier, Alexander Collins, Geneva Collins, Thelma Crowder, Dan Currie, Sarah Jane Currie, James DeVoual, Harvey Ellis, Katie Ellis, James Gray, Walter Griffin, Sr., Bernard Gusta, Clyde Harvey, Jim Holt, Julia Coleman Jones, Nathaniel Jones, Samuel Jones, Jr., Julia Lucas, Nathaniel Martin, Leander Monroe, Johnny Moore, William Owens, Henry Patton, Jr., Marguerite Thompson, Mack Tisdale, Thelma Walker, Eddie Walls, Jr., Carl Lee (Boone) Wells, Katie Beatrice Wells, and Aaron Wilson.

Alexander Collins, for example, was a leader in the boycott movement and helped draft and present the demands that preceded the boycott. R. 4658-61, 9992-93. He also gave speeches in favor of the boycott. R. 2356, 2782, 3665. Neither Charles nor James Collier testified but Barbara Ellis said that on the first day of the boycott they were in front of her store "grabbing people and telling them they couldn't go in the stores and trade"; she did not recall that they were there after that first day. R. 1204-05. Thelma Crowder was said to have put a picket sign on a child and to have talked to people about the boycott. R. 782-83. Dan Currie, 80 years old at the time of the trial, was said to have been a store watcher, to have told people not to trade with whites, and to have lined up pickets. R. 1205-06. Julia Coleman Jones had been a member of the NAACP in Port Gibson since around 1950 who attended meetings. R. 1270, 2811-12. She honored the boycott and marched but did not picket. R. 4464. She was said by Barbara Ellis to have told others to boycott. R. 1207-08, 6319-26. Marguerite Thompson, state recording secretary of the NAACP, was said to have actively promoted the boycott. R. 2832-33. Thelma Walker was said to have picketed. R. 2075.

for their involvement is extremely weak.[39] And there was no evidence that Petitioner NAACP ever organized, sponsored, or condoned violence or threats of violence in connection with the Claiborne County boycott or any other civil rights activity.[40] It is neither disputed nor denied that the Claiborne County boycott was organized with the strong support of Petitioner NAACP. But the NAACP's boycott activities, as abundantly demonstrated above, were constitutionally protected forms of non-violent political expression and association.

On this record, finding these 92 Petitioners vicariously liable for all lost patronage associated with the boycott, because of the mere "presence" of the few sporadic episodes over a three-year period described above, is an un-

---

[39] For example, in describing several alleged "crimes" relating to the boycott, Sheriff McKay indicates that a Henry Anderson was charged with assault and battery but apparently was never tried. R. 1376, 1378, 1380-81, 1391-92. It is not clear that this incident involved Petitioner Henry Anderson, Sr. (he was not asked about it in his testimony, R. 8347-8419); further, there is no showing that this incident was in fact related to the boycott. Emerson Davis, the one who allegedly complained about this incident, testified that Henry Anderson never said anything to him about the boycott. R. 13881, 13943. Joseph Mack (Buster) Barber, a car salesman at Allen Motor Company, was said by James Hudson to have physically stopped customers from entering stores. R. 803. Hudson indicates that Barber told one of Hudson's customers as the customer was leaving the store "You know this store is boycotted . . . you're not supposed to go in there. Don't go in there any more," and then Barber "turned around, I believe, and walked off." R. 655-56. Hudson also indicated that Barber was among a group of people that "stopped" another customer but does not specifically indicate that Barber said or did anything. R. 647-54; Ex. D-1 (R. 753, 754). Petitioners Bilbo Smith and Marcus Jones were said to have threatened to take a package from someone who had emerged from a boycotted store but did not take it. R. 646. Police Chief Porter testified that George Henry Walker told Wes Butler that Butler "had better not go in" a certain store. R. 2178.

[40] The only evidence on this point is to the contrary. *See* R. 15618-19.

constitutional infringment on their rights of political expression and association. This Court's decisions have established "with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments." *Abood v. Detroit Board of Education*, 431 U.S. 209, 233 (1977).[41] As the Court has recently observed, the rights of association are themselves critical in guaranteeing the rights of individual expression on public issues, because effective advocacy on those issues "is undeniably enhanced by group association." The rights of expression and association "overlap and blend; to limit the right of association places an impermissible restraint on the right of expression." Traditional theories of group liability are constitutionally suspect when applied to political assembly and expression:

> "There are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them."

Citizens Against Rent Control v. City of Berkeley, 102 S. Ct. 434, 437, 439 (1981). The leaders of the colonial boycotts were prepared to concede that the Boston Tea Party was a regrettable and unlawful act, but they argued strongly that this did not affect the legality of the boycott movement. For example, Jefferson "admitted that the actions of the exasperated participants in the Boston Tea Party were not strictly regular, that these men did

---

[41] This protection for the rights of association has deeply established roots. *See De Jonge v. Oregon*, 299 U.S. 353 (1937). In *De Jonge*, the defendant was convicted of "criminal syndicalism" merely for participating in a meeting of the Communist party. Chief Justice Hughes noted that "[a] like fate might have attended any speaker, although not a member, who 'assisted in the conduct' of the meeting." *Id.* at 362. The "broad reach" of the statute rejected in *De Jonge* closely parallels the theory of civil conspiracy employed in this case. *See id.* at 362-63.

wrong in destroying the 'obnoxious commodity,' and that they were properly amenable to the laws of the land, that is, to the laws of Massachusetts Bay." MALONE at 187. But Jefferson continued to support the boycott and was a member of a local committee to enforce it.

The decisions of this Court are faithful to this view. The Court has ruled that an individual associating with others to advance political beliefs and ideas is not responsible for another's illegal acts absent a highly particularized showing of individual responsibility. *Noto v. United States*, 367 U.S. 290, 299-300 (1961). More than mere knowledge of illegal goals or means is required. *Elfbrandt v. Russell*, 384 U.S. 11, 16 (1966). There must be shown "a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." *Healy v. James*, 408 U.S. 169, 186 (1972).[42] Those who participate in an organization's protected activities to advance particular beliefs—even with knowledge of other, perhaps illegal, activities or goals—do not lose constitutional protection unless they specifically intend illegal conduct. *United States v. Spock*, 416 F.2d 165, 173 (1st Cir. 1969).

Noto, *Healy*, and *Spock* hold that joint and several liability could not have been imposed on all the Petitioners—or any of them—except upon findings that each of them knew unlawful conduct was being used to further the boycott and that each had the specific intent to further the boycott by illegal means. Neither of the lower courts made any of these constitutionally necessary findings. The Mississippi Supreme Court merely stated that "the present state of facts" indicates an "agreed use of illegal force" (App. 23a), and, quoting the chancellor, indicated

---

[42] *See also United States v. Robel*, 389 U.S. 258, 266 (1967); *Keyishian v. Board of Regents*, 385 U.S. 589, 606-07 (1967); *Aptheker v. Secretary of State*, 378 U.S. 500, 510-11 (1964); *United States v. Dellinger*, 472 F.2d 340, 392-94 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973).

that "certain of the defendants, acting for all others, engaged in acts of physical force and violence . . . ." *Id.* at 20a. These conclusory statements are hardly the "conscious determination[s] of the existence or nonexistence of the critical fact" that are required in constitutional cases. *Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976). *See also Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 293 (1941) ("[I]t is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality"). In the absence of the particularized findings of culpability required by the First Amendment, this Court should reverse the Mississippi judgment holding the entire boycott illegal and imposing damage liability upon all the Petitioners.

C. It Was Constitutionally Impermissible To Hold Petitioners Liable in Damages for Business Losses of Respondents That Resulted from Peaceful Enforcement of a Political Boycott.

In any event, it was wrong to assess damages for all the results of the boycott, including protected First Amendment activity. It is a fundamental principle of tort law that damages for unlawful acts may be recovered only upon proof of causation. W. PROSSER, LAW OF TORTS § 41, at 236 (4th ed. 1971). That principle has constitutional significance where, as here, the defendants have engaged in peaceful protest protected by the First Amendment and where this peaceful activity was at least the predominant factor in the success of the boycott. As the Court has recently held, "Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980). *See also NAACP v. Button*, 371 U.S. 415, 438 (1963).

While damages may be recovered in state courts for tortious or otherwise illegal conduct, "the permissible scope of state remedies in this area is strictly confined to the direct consequences of such conduct, and does not include consequences resulting from associated peaceful picketing . . . ." *United Mine Workers v. Gibbs*, 383 U.S. 715, 729 (1966). *See also United Mine Workers v. Pennington*, 381 U.S. 657, 671-72 (1965); *Teamsters Local 20 v. Morton*, 377 U.S. 252, 259-62 (1964) (damage award under state law for unlawful union activity cannot include losses caused by simultaneous union activity protected by federal labor law). This rule is of special importance when illegal conduct is present with activity entitled to constitutional protection. In *Stryjewski v. Local Union No. 830*, 451 Pa. 550, 553-54, 304 A.2d 463, 465-66 (1973), for example, dealing with an award of damages allegedly arising from mass picketing and associated violence in a labor context, the Pennsylvania Supreme Court, following *Gibbs*, reversed a lower court judgment holding defendants liable for all the damages caused by the picketing:

> "[I]t must be noted that although a state court has power to assess monetary damages, such damages are constitutionally permissible only where they compensate an injured party for damages sustained as a result of violent or otherwise unlawful picketing. No damages are recoverable where the activity complained of consists of constitutionally protected peaceful picketing.
>
> ". . . .
>
> "Our task is not merely to ensure that the damages sustained were proximately caused by the challenged picketing and other activity, but rather is to ensure that such damages, to be constitutionally compensable, resulted *solely* from unlawful and violent activities which are without the protection of the First Amendment." (Emphasis added.)

Accord, United Aircraft Corp. v. International Association of Machinists, 161 Conn. 79, 98, 285 A.2d 330, 341

(1971), *cert. denied*, 404 U.S. 1016 (1972) ("a state court may properly award damages only for losses arising from tortious conduct and not for losses arising from protected strike activity").

It is undisputed that the chain of events collectively referred to as "the Claiborne County boycott" consisted primarily of constitutionally protected peaceful marching, orderly picketing, distribution of leaflets, giving of speeches, and individual attempts at persuasion and nonviolent enforcement described above. It is undisputed that Black persons made voluntary decisions to withhold patronage from boycotted businesses; even the Mississippi Supreme Court opinion recognizes that the enforcement devices it erroneously found unlawful formed only "a part of the boycott activity" that "contributed" to its success. App. 24a. Yet the judgment under review does not even attempt to parse the merchants' business losses and indeed makes no finding that acts or threats of violence by any of these Petitioners caused any of these losses.[43] Instead, the Mississippi Supreme Court simply concluded that the merchants were entitled to recover for any damages "resulting from the boycott." App. 35a. That conclusion was constitutional error. As the foregoing decisions of this Court make clear, the only damages for which Respondents could have recovered would have been business losses caused by unlawful conduct for which Petitioners had been proven responsible.

---

[43] Nor does the record contain any factual basis on which appropriate allocation can be made. The merchants' principal evidence on causation was the opinion testimony of an economist proceeding under the assumption that all business losses suffered by the merchants from the boycott were recoverable. App. 28a-35a. The merchants made no effort at trial to show that any particular loss was incurred as a result of the purported campaign of violence.

III. THE INJUNCTION FLATLY PROHIBITING PEACEFUL FIRST AMENDMENT EXPRESSION AND ASSOCIATION IS AN UNCONSTITUTIONAL PRIOR RESTRAINT.

The chancellor's decree flatly bans all Petitioners from "[p]ersuading, soliciting, advising, threatening, coercing, intimidating and restraining any person" to withhold patronage from the merchants. His decree also prohibits all future "[p]icketing or patroling" of the merchants' stores. App. 19g. Whatever the constitutional validity of the damage liability assessed against all Petitioners, the injunction outstanding in this case is an invalid prior restraint of activities clearly protected by the First Amendment.

Prior restraints are presumptively unconstitutional; they are "the most serious and the least tolerable infringement" on First Amendment rights. *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976). In his landmark opinion for the Court in *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931), Chief Justice Hughes concluded that "it has been generally, if not universally, considered that it is the chief purpose of the guaranty [of a free press] to prevent previous restraints upon publication." That observation is equally true and powerful with respect to peaceful picketing, distributing leaflets, and speaking. *E.g.*, *Nebraska Press Assn. v. Stuart*, *supra*, 427 U.S. at 570; *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418-19 (1971).

While the Court has not said that prior restraints may never be upheld, it has held that the circumstances that would justify an injunction against speech, or peaceful picketing or distributing leaflets, would have to be extraordinary. It would have to be shown that the challenged activity will "inevitably, directly, and immediately cause the occurrence" of a serious evil the state may legitimately proscribe.[44] Here, however, the merchants

[44] *See New York Times Co. v. United States*, 403 U.S. 713, 726-27 (1971) (Brennan, J., concurring). *See also id.* at 730 (Stewart

made no showing, and the Mississippi courts made no finding, that the continued exercise of Petitioners' rights of peaceful speech and assembly would cause a serious substantive evil that Mississippi might legitimately proscribe. The chancellor found only "that the complainants are entitled to a permanent injunction." App. 68b. The Mississippi Supreme Court did not analyze the injunction at all in its main opinion and, in denying Petitioners' rehearing petition directed to this issue, issued no opinion at all. App. 1e.

The chancellor's injunction cannot be justified on the basis of the ambiguous statement that an "atmosphere of fear . . . prevailed among Blacks from 1966 until 1970," App. 35b. If that is the basis for the injunction issued in 1976, six years later, it is obviously insufficient. Even apart from the considerable lapse in time, such a conclusion begs the questions whether and why future peaceful speeches, leaflets, marches, and picketing would cause any substantive evil at all. Nor can the injunction be justified on the basis of fear induced in Black persons who patronized white stores by "vilification and ostracism" (App. 37b) or "[i]ntimidation, threats, social ostracism, vilification, and traduction" (App. 39b), or the finding (App. 19b) that

> "The names of black citizens who were seen trading with whites were read out at NAACP meetings, and these names were published in a mimeographed tabloid called the 'Black Times.' They were branded as traitors to the black cause, called demeaning names, and socially ostracized for merely trading with whites." [45]

& White, JJ., concurring) (disclosure will not "surely result in direct, immediate, and irreparable damage to our Nation or its people"); *Nebraska Press Assn. v. Stuart, supra*, 427 U.S. at 569-70 (refusing to rule out possibility of showing "the kind of threat to fair trial rights that would possess the requisite degree of certainty to justify restraint").

[45] Compare paragraph 11 of the Association adopted by the unofficial assembly known as the First Continental Congress in 1774, quoted at page 20 *supra*.

None of those pejorative labels justifies prior restraint of nonviolent speech, marching, picketing and publication.

The lower courts may have fashioned this extraordinarily overbroad injunction in reliance on the Fifth Circuit's language in *Smith v. Grady*, 411 F.2d 181 (5th Cir. 1969), App. 23a, or upon this Court's decision in *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941). App. 20a. Their reading of *Smith v. Grady* is simply wrong.[46] And as the Fifth Circuit held in *Henry II*,[47] the *Meadowmoor* case is clearly inapplicable here.

In *Meadowmoor*, this Court upheld an injunction that barred all labor picketing, including peaceful protesting. The circumstances of that case amounted literally to a labor war, in which violence was "neither episodic nor isolated." 312 U.S. at 295. The Court cautioned that the decision was not to become the basis for a broader rule. It warned that the "[r]ight to free speech in the future cannot be forfeited because of dissociated acts of past violence." *Id.* at 296. Justice Frankfurter, the author of the *Meadowmoor* opinion, wrote ten years later that *Meadowmoor*'s restrictions on protected activity were "designed to prevent recurrence of violence." *Dennis v.*

---

[46] In that case, the district judge *permitted* peaceful picketing in his injunction. *See* 411 F.2d at 183-84. On appeal, Judge Coleman held that the district judge abused his discretion in enjoining picketers from "utter[ing] any sounds," emphasizing that "[t]he decisive consideration is that *total denial* of free speech is never to be approved." *Id.* at 189 (emphasis in original).

[47] In *Henry*, the Fifth Circuit concluded that the chancellor's sweeping injunction

> "overshoots the mark and the situation cannot be saved by *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 1941, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, a case premised on violence of an intensity and duration in no way present here, or at least on the record before the district court." 595 F.2d at 304, *quoting Machesky v. Bizzell*, 414 F.2d 283, 290-91 (5th Cir. 1969).

United States, 341 U.S. 494, 530 (1951) (concurring opinion).[48]

Meadowmoor's extremely violent facts go far beyond any version of the facts relating to the incidental presence of some physical violence in this case. In cases of lesser violence than *Meadowmoor*, this Court has not again applied its holding to enjoin protected First Amendment activity or even activity that is merely not unlawful. In *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139 (1957), faced with a mixture of violence and protected activity somewhat below that in *Meadowmoor*, the Court reversed an injunction "insofar as it enjoined peaceful picketing," distinguishing *Meadowmoor*. In *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g* 181 Kan. 898, 317 P.2d 817 (1957), the Court summarily reversed for overbreadth a state court decision relying on *Meadowmoor* because of "unlawful intimidation and threats." The Court again refused to apply *Meadowmoor* in *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 180, 183 (1968). It pointedly observed: "An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by the constitutional mandate and the essential needs of the public order."

Meadowmoor does not govern this case.

---

[48] In any event, there is a serious constitutional question whether *Meadowmoor*, a picketing case decided in the context of pervasively violent labor union activity, can be applied to political boycotts. The First Amendment's guarantees are broader for purposes of political activity than for purposes of labor union activity. *See Abood v. Detroit Bd. of Education*, 431 U.S. 209 (1977). The Court has explicitly distinguished labor picketing from public protests concerning the desegregation of local schools, observing that the latter "res[t] on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 466-67 (1980). Here, too, Petitioners' communicative activity has been directed at civil and political reforms, not labor or other economic issues. If *Meadowmoor* has any vitality at all, it is only in the narrow field of industrial strife.

CONCLUSION

For the reasons stated above, the judgment holding the entire boycott unlawful, assessing damage liability for all business losses incurred by Respondents against all the Petitioner participants and enjoining their future peaceful boycott activities, should be reversed in its entirety.

Respectfully submitted,

LLOYD N. CUTLER
JAMES ROBERTSON
EDWARD TYNES HAND
WILLIAM R. RICHARDSON, JR.
JOHN PAYTON
DRAKE CUTINI
WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

THOMAS I. ATKINS
CHARLES E. CARTER
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Tenth Floor
1790 Broadway
New York, New York 10019
(212) 245-2100
Counsel for Petitioners

Of Counsel:
WILLIAM L. ROBINSON
FRANK R. PARKER
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

December 24, 1981

APPENDIX

LIBRARY OF CONGRESS

JOURNALS OF THE CONTINENTAL CONGRESS

1774 - 1789

EDITED FROM THE ORIGINAL RECORDS IN THE LIBRARY OF CONGRESS BY WORTHINGTON CHAUNCEY FORD
CHIEF, DIVISION OF MANUSCRIPTS

Volume I. 1774

WASHINGTON
GOVERNMENT PRINTING OFFICE
1904

* * * * * *

THURSDAY, OCTOBER 20, 1774.

The Congress met.

The association being copied, was read and signed at the table, and is as follows:—

Here insert the Association.

WE, his majesty's most loyal subjects, the delegates of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties of New-Castle, Kent and Sussex, on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed to represent them in a continental Congress, held in the city of Philadelphia, on the 5th day of September, 1774, avowing our allegiance to his majesty, our affection and regard for our fellow-subjects in Great-Britain and elsewhere, affected with the deepest anxiety, and most alarming apprehensions, at those grievances and distresses, with which his Majesty's American subjects are oppressed; and having taken under our most serious deliberation, the state of the whole continent, find, that the present unhappy situation of our affairs is occasioned by a ruinous system of colony administration, adopted by the British ministry about the year 1763, evidently calculated for inslaving these colonies, and, with them, the British empire. In prosecution of which system, various acts of parliament have been passed, for raising a revenue in America, for depriving the American subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger, by directing a new and illegal trial beyond the seas, for crimes alleged to have been committed in America: and in prosecution of the same system, several late, cruel, and oppressive acts have been passed, respecting the town of Boston and the Massachusetts-Bay, and also an act for extending the province of Quebec, so as to border on the western frontiers of these colonies, establishing

an arbitrary government therein, and discouraging the settlement of British subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices, to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked ministry shall chuse so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his majesty's subjects, in North America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: and, therefore, we do, for ourselves, and the inhabitants of the several colonies, whom we represent, firmly agree and associate, under the sacred ties of virtue, honour and love of our country, as follows:

1. That from and after the first day of December next, we will not import, into British America, from Great-Britain or Ireland, any goods, wares, or merchandise whatsoever, or from any other place, any such goods, wares, or merchandise, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East-India tea from any part of the world; nor any molasses, syrups, paneles,[1] coffee, or pimento, from the British plantations or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign indigo.

2. We will neither import nor purchase, any slave imported after the first day of December next;[2] after which time, we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

---

[1] Brown unpurified sugar.

[2] In the pamphlet edition this sentence reads: "That we will neither import, nor purchase any slave imported, after the first day of December next."

3. As a non-consumption agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree and associate, that, from this day, we will not purchase or use any tea, imported on account of the East-India company, or any on which a duty hath been or shall be paid; and from and after the first day of March next, we will not purchase or use any East-India tea whatever; nor will we, nor shall any person for or under us, purchase or use any of those goods, wares, or merchandise, we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of December, except such as come under the rules and directions of the tenth article hereafter mentioned.

4. The earnest desire we have, not to injure our fellow-subjects in Great-Britain, Ireland, or the West-Indies, induces us to suspend a non-exportation, until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the British parliament herein after mentioned are not repealed, we will not, directly or indirectly, export any merchandise or commodity whatsoever to Great-Britain, Ireland, or the West-Indies, except rice to Europe.[3]

5. Such as are merchants, and use the British and Irish trade, will give orders, as soon as possible, to their factors, agents and correspondents, in Great-Britain and Ireland, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in America; and if any merchant, residing in Great-Britain or Ireland, shall directly or indirectly ship any goods, wares or merchandise, for America, in order to break the said non-importation agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not, from thenceforth, have any commercial connexion with such merchant.

---

[3] See *Journals of Congress*, 1 August, 1775, *post*.

6. That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said non-importation agreement, on pain of immediate dismission from their service.

7. We will use our utmost endeavours to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as seldom [1] as may be, especially those of the most profitable kind; nor will we export any to the West-Indies or elsewhere; and those of us, who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, on moderate terms.

8. We will, in our several stations, encourage frugality, economy, and industry, and promote agriculture, arts and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of gaming, cock-fighting, exhibitions of shews, plays, and other expensive diversions and entertainments; and on the death of any relation or friend, none of us, or any of our families, will go into any further mourning-dress, than a black crape or ribbon on the arm or hat, for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarves at funerals.

9. Such as are venders of goods or merchandise will not take advantage of the scarcity of goods, that may be occasioned by this association, but will sell the same at the rates we have been respectively accustomed to do, for twelve months last past.—And if any vender of goods or merchandise shall sell any such goods on higher terms, or shall, in any manner, or by any device whatsoever violate or depart from this agreement, no person

---

[1] The pamphlet says *sparingly*.

ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

10. In case any merchant, trader, or other person,[2] shall import any goods or merchandise, after the first day of December, and before the first day of February next, the same ought forthwith, at the election of the owner, to be either re-shipped or delivered up to the committee of the county or town, wherein they shall be imported, to be stored at the risque of the importer, until the non-importation agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last-mentioned case, the owner or owners of such goods shall be reimbursed out of the sales, the first cost and charges, the profit, if any, to be applied towards relieving and employing such poor inhabitants of the town of Boston, as are immediate sufferers by the Boston port-bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandises shall be imported after the said first day of February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American

---

[2] Persons is used in the pamphlet.

liberty; and thenceforth we respectively will break off all dealings with him or her.

12. That the committee of correspondence, in the respective colonies, do frequently inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this association.

13. That all manufactures of this country be sold at reasonable prices, so that no undue advantage be taken of a future scarcity of goods.

14. And we do further agree and resolve, that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country.

And we do solemnly bind ourselves and our constituents, under the ties aforesaid, to adhere to this association, until such parts of the several acts of parliament passed since the close of the last war, as impose or continue duties on tea, wine, molasses, syrups, paneles, coffee, sugar, pimento, indigo, foreign paper, glass, and painters' colours, imported into America, and extend the powers of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judge's certificate to indemnify the prosecutor from damages, that he might otherwise be liable to from a trial by his peers, require oppressive security from a claimant of ships or goods seized, before he shall be allowed to defend his property, are repealed.—And until that part of the act of the 12 G. 3, ch. 24, entitled "An act for the better securing his majesty's dock-yards, magazines, ships, ammunition, and stores," by which any persons charged with committing any of the offenses

therein described, in America, may be tried in any shire or county within the realm, is repealed—and until the four acts, passed the last session of parliament, viz. that for stopping the port and blocking up the harbour of Boston—that for altering the charter and government of the Massachusetts-Bay—and that which is entitled "An act for the better administration of justice, &c."—and that "for extending the limits of Quebec, &c." are repealed. And we recommend it to the provincial conventions, and to the committees in the respective colonies, to establish such farther regulations as they may think proper, for carrying into execution this association.

The foregoing association being determined upon by the Congress, was ordered to be subscribed by the several members thereof; and thereupon, we have hereunto set our respective names accordingly.

IN CONGRESS, PHILADELPHIA, *October 20, 1774.*

Signed, PEYTON RANDOLPH, *President.*

New Hampshire	Jn.º Sullivan
	Nath.el Folsom
Massachusetts Bay	Thomas Cushing
	Sam.l Adams
	John Adams
	Rob.t Treat Paine
Rhode Island	Step. Hopkins
	Sam: Ward
Connecticut	Elipht Dyer
	Roger Sherman
	Silas Deane
New York	Isaac Low
	John Alsop
	John Jay
	Ja.s Duane
	Phil. Livingston
	W.m Floyd
	Henry Wisner
	S: Bocrum
Virginia	Richard Henry Lee
	G.o Washington
	P. Henry J.r
	Richard Bland
	Benj.n Harrison
	Edm.d Pendleton
North Carolina	Will Hooper
	Joseph Hewes
	R.d Caswell
New Jersey	J. Kinsey
	Wil: Livingston
	Step.n Crane
	Rich.d Smith
	John De Hart
Pennsylvania	Jos. Galloway
	John Dickinson
	Cha Humphreys
	Thomas Mifflin
	E. Biddle
	John Morton
	Geo: Ross
The Lower Counties New Castle	Caesar Rodney
	Tho. M: Kean
	Geo: Read
Maryland	Mat Tilghman
	Th.s Johnson Jun.r
	W.m Paca
	Samuel Chase
South Carolina.	Henry Middleton
	Tho Lynch
	Christ Gadsden
	J Rutledge
	Edward Rutledge

Ordered, that this association be committed to the press, and that one hundred & twenty copies be struck off.

The Congress then resumed the consideration of the Address to the Inhabitants of these colonies, & after debate thereon, adjourned till to-morrow.

* * * * * *